



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 3.41 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 3:00 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord by sending the dispute resolution package registered mail on August 28, 2014. She testified that she sent registered mail requesting the return of her deposit on a previous occasion. She provided a receipt and Canada Post tracking information with respect to the service of her dispute resolution package. The package was returned unclaimed. The tenant testified that she sent the landlord's mail to the address that the landlord resides at. The tenant provided sworn, undisputed testimony that she had personal knowledge of where the landlord lived.

Residential Tenancy Policy Guideline No. 12 informs on the service requirements under the *Residential Tenancy Act*. It states that deemed service means that a document is presumed to have been served unless there is clear evidence to the contrary. Deemed service applies to all types of documents not personally served, including documents served by registered mail. The Policy Guidelines state:

where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service

provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing...

Based on the evidence provided and pursuant to section 89 and 90 of the *Act*, and the applicable Policy Guidelines, I find the landlord deemed served with this application and notice of hearing on September 2, 2015, 5 days after mailing of the package.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss as a result of this tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on July 6, 2014. The tenant testified that she was scheduled to move in in May 2014 but she was told by the landlord that the rental unit was not yet ready for move-in. The rental amount for the unit was \$900.00 payable on the first of each month. The tenant testified she had provided a series of post-dated cheques to the landlord in advance of her move-in. She testified that she did not ultimately provide any security deposit or sign an agreement with the landlord.

The tenant testified that she met the landlord and arranged to move into a rental unit that the landlord had available. The tenant testified that she was advised the rental unit would be available in May 2014 and that she made arrangements based on that advice. She testified that, eventually, at the beginning of July, she paid \$2600.00 to movers to deliver her belongings to her new location. This new location was a substantial distance from her old residence.

The tenant testified that, when she moved her belongings to her new location, the landlord asked her to deliver several appliances. The tenant testified that the landlord did not provide any compensation for this act. The tenant testified that she incurred an additional cost because of these large, extra items.

The tenant testified that, on arrival at the rental unit, it was not habitable. She testified that there were renovations underway and that nothing had been installed or hooked up for services. She testified that the rental unit was dirty and full of garbage. The tenant testified that there were no doors in some areas and, where there were doors, they had no doorknobs.

One of the movers from the moving company testified as a witness on behalf of the tenant. He was reached at the number provided on the moving company invoices. He stated that he remembered the circumstances of this move. He testified that the landlord had indeed asked the tenant to deliver several appliances in the truck with her belongings. He testified that the tenant paid the entire balance of the cost of the move. He also testified that, on attendance to the tenant's new home, he identified a number of safety issues as well as noting that the rental unit was dirty, with garbage and leftover renovation pieces. He testified that the tenant attempted to clean before they unloaded but ultimately did not complete that job. He testified that the tenant was forced to store her belongings in the upper unit where another tenant resided.

The tenant testified that her intention was to begin a long term tenancy in this location. The tenant testified that she did not remain in this rental unit long. She testified that she vacated after less than one month, when she had gathered funds to move back to her previous residence. She testified, again confirmed with documentary evidence and the testimony of the mover, that she paid \$2600.00 to move all of her belongings back to her original home.

The tenant sought compensation for the cost of both moves. She also sought compensation for her gas costs in traveling to this new home, at \$238.59 and \$135.00 for a family member's gas to come and assist her. She sought compensation for a local person to help her load her items again to move back. She testified that she paid that person \$100.00. Finally, the tenant sought compensation for the cost of buying pizza for the movers, \$57.15. The tenant has receipts reflecting the cost of the move and she has provided some receipts for her other expenses but she does not have documentation of payment of the local mover-person or sufficient proof to show the necessity of payment to this local mover-person.

The tenant's application for a monetary award of \$5,857.56 included the following items;

Item	Amount
Move to the Rental Unit	\$2600.00
Move from the Rental Unit	2600.00
Pizza for Movers	57.15
Mover Helper	100.00
Gas Receipts - Tenant	238.59
Gas Receipts for Tenant's Brother	135.00
Creation of CD material for hearing	26.82
Recovery of Filing Fee for this Application	100.00

Total Monetary Order Requested	\$5857.56
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Analysis

Under section 2(1) of the *Residential Tenancy Act*, it states that the *Act* applies to tenancy agreements, rental units and other residential property. Section 12 and 13 explain the requirements of a tenancy agreement. Ideally, a tenancy agreement is made in writing. Other requirements of a tenancy agreement include;

- legal names of both parties;
- the address of the rental unit;
- the address telephone number of the landlord;
- the date the tenancy agreement is entered into and the date on which the tenancy starts;
- whether the tenancy is on a weekly, monthly or other periodic basis;
- the amount of rent and the day that rent is due;
- which services and facilities are included in the rent; and
- the amount of any security deposit or pet damage deposit and the date those deposits should be paid.

These parties created an agreement subject to their mutual understanding of the circumstances. According to the undisputed sworn testimony of the tenant and the supporting documents provided, the parties had full knowledge of each other's names and contact information; they agreed on the address of the rental unit and the date that the tenant would move in to the unit; they had agreed that this would be a month to month tenancy for a long term; that the rent would be payable on the first of each month; that a security deposit would be paid (at half month's rent) to the landlord on the tenant's arrival in the town of the rental unit. Most significantly, the landlord and tenant agreed that the tenant would move herself and her belongings to a different area of the province for the purpose of residence in the landlord's rental premises.

Despite the unsuccessful outcome of this arrangement and the landlord's lack of presence at this hearing, I find that the mutual understanding of the parties on the terms of a tenancy agreement and the undisputed testimony of the tenant with respect to communication between the parties as well as the fact that the landlord prepared a notice to end tenancy confirms the intention of both parties to create a residential tenancy. Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. The tenant provided sufficient evidence to show that there was a tenancy and that she is able to claim loss or damage with respect to that tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The loss claimed by the tenant is substantial. Pursuant to section 67 of the *Act*, the tenant must prove the damage or loss that she has incurred and prove that the loss incurred stemmed from the landlord's failure to comply with the tenancy agreement or the legislation. The tenant has provided proof, in sworn testimony, witness testimony and documentary evidence that she incurred \$5200.00 in costs merely to transport her belongings to and from the rental unit. The invoices and the testimony of her witness verify this financial loss. The tenant also provided copies of receipts totaling \$238.59 for her gas costs to drive to and from the new location. I find that these were costs that caused the tenant out of pocket losses as a direct result of entering into the tenancy with the landlord who failed to provide the rental unit to her in a habitable condition in a timely manner.

I find that feeding pizza to the paid movers, paying someone local to assist with manual labour and the cost of gas to a family member who likely acted as both labour and emotional support, are not costs that are compensable. These are costs that the tenant chose to incur and that were not necessary as a result of the tenancy or actions of the landlord.

I find the tenant entitled to a monetary award from the landlord as follows;

Item	Amount
Move – 2 directions (\$2600.00 x 2)	\$5200.00
Gas Receipts - Tenant	238.59
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$5538.59

Conclusion

I find the tenant entitled to a monetary order in the amount of \$5538.59 against the landlord for losses arising out of this tenancy and to recover the filing fee.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 30, 2015

Residential Tenancy Branch

